

After reviewing the record and considering the arguments of the parties, the Appeals Board finds claimant has failed to establish that the medical expenses were past due and the decision of the Administrative Law Judge denying penalties should be affirmed.

Claimant seeks penalties pursuant to K.S.A. 44-512a in the amount of ten percent (10%) of two medical bills. The first is a statement in the amount of \$11,455.80 from St. Joseph Medical Center for hospitalization from February 28, 1994, to March 17, 1994. The hospitalization was at the direction of Dr. Joslin, who had been added as an authorized treating physician by preliminary order dated February 16, 1994. The St. Joseph medical bill was issued March 29, 1994, and claimant made written demand for payment on March 30, 1994. Respondent's attorney sent the statement to his client on April 5, 1994. The statement was paid by check and mailed April 28, 1994, and received April 30, 1994. The second bill at issue was a \$756 statement for biofeedback training done in March, 1994. The statement shows a date of April 5, 1994, but the provider signature appears to have been on May 2, 1994. Claimant made written demand for payment on May 16, 1994. At the time of oral argument, claimant's attorney indicated, without contradiction by respondent's counsel, the statement was paid June 20, 1994. A third statement was initially included in claimant's written demand. It later appeared this third statement was for medical care unrelated to the workers compensation injury.

Claimant asserts that under K.S.A. 44-512a a ten percent (10%) penalty is required, not discretionary, if payment is not made within twenty (20) days of written demand. However, the penalties provisions of K.S.A. 44-512a only apply once a medical bill is past due. The Appeals Board is unwilling to find that a medical bill is, in all cases, past due the day after it is received as claimant suggests. Billing practices differ and nothing in the record of this case indicates when payment on the bills in question were due or past due. The Appeals Board, therefore, finds that claimant's request for penalties should be denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated May 10, 1994, denying claimant's request for penalties should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Steven L. Foulston, Attorney at Law, Wichita, KS 67202
Douglas C. Hobbs, Attorney at Law, Wichita, KS 67202
John D. Clark, Administrative Law Judge
George Gomez, Director